IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLIATION NO.317 OF 1997

Shri.Bastiram Gavba Avhad
R/o.Dodi, Tal.Sinnar,
Dist:Nashik.
(Presently in Central Jail,
Nashik.) Petitioner/
Ori.Accd.No.1

V/s.

The State of Maharashtra Respondent

Shri.B.G. Vaidya for Petitioner.
Shri.S.R. Shinde APP for the State.

CORAM : V.M. KANADE, J.

DATED : 12/01/2007

ORAL JUDGMENT:-

1. Heard learned counsel for the petitioner and learned APP for the State.

2. Petitioner is challenging the judgment and order passed by 2nd Joint J.M.F.C., Sinnar whereby he convicted the petitioner for the offences punishable U/s.324, 323 of IPC and sentenced him to suffer SI for one month and penalty of Rs.200/- and in default to

undergo imprisonment for further period of 15 days. Order of conviction and sentence for offence punishable U/s.323 of IPC is confirmed and that for offence punishable U/s.324 of IPC is set aside by 3rd Additional Sessions Judge, Nashik.

3. Learned counsel for the petitioner submitted that incident had taken place on 22/06/1990 and then after the incident, the petitioner had not come to the adverse notice of police at any time. He further submitted that therefore, petitioner be given protection under Section 4 of Probation of Offenders Act. He further submitted that even on merits, the petitioner had a good case as the prosecution had not examined medical officer and therefore, injuries on the person of complainant had not been proved. He further submitted that even investigating officer has not been examined.

4. I have perused the judgment and order passed by the trial court and also by the lower appellate court. Both the courts have relied on the evidence of eye witnesses and have held that offence had been proved against the present petitioner. In my

view, it is not possible to take different view when there are two views. Conviction therefore by the lower appellate court against the petitioner U/s.323 of IPC is confirmed.

5. Second submission of the petitioner is however, will have to be accepted. The petitioner, at the time when offence had taken place was 21 years of age. More than 16 years have passed from the date of incident. The petitioner has not come to the adverse notice of police after the incident. This fact is admitted by the learned APP for the State, on instructions which are already taken. Trial court has sentenced the petitioner to undergo one month S.I. Considering the passage of time and nature of the offence, under which the offence had taken place, in my view, this is a fit case where protection U/s.4 of Probation of Offenders Act should be given to the petitioner. In the result, conviction U/s.323 of IPC against the petitioner is confirmed. However, the petitioner is given benefit under Section 4 of Probation of Offenders Act and he may not be sent to jail. His sentence is therefore, suspended on his executing bond of good behaviour for the period of six months in the sum of Rs.5000/-. Criminal revision application is allowed in

above terms.

V.M. KANADE J.